

1 **RIMAC & MARTIN, P.C.**  
JOSEPH M. RIMAC - State Bar No. 72381  
2 ANNA M. MARTIN - State Bar No. 154279  
1051 Divisadero Street  
3 San Francisco, California 94115  
Telephone (415) 561-8440  
4 Facsimile (415) 561-8430  
5 Attorneys for Defendant  
6 UNUM LIFE INSURANCE COMPANY OF AMERICA

7  
8 **UNITED STATES DISTRICT COURT**  
9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

10  
11 ***E-FILING***

12 SHERI GARAY, )  
13 ) CASE NO. 3:08-cv-01059-EDL  
14 Plaintiff, )  
15 vs. ) **NOTICE OF *EX PARTE***  
16 UNUM LIFE INSURANCE COMPANY OF ) **APPLICATION AND *EX PARTE***  
AMERICA, and DOES 1-10, ) **APPLICATION TO EXTEND TIME**  
17 Defendants. ) **TO RESPOND TO COMPLAINT;**  
18 ) **[PROPOSED] ORDER THEREON**

19 **TO PLAINTIFF AND HER ATTORNEYS OF RECORD:**

20 Defendant UNUM LIFE INSURANCE COMPANY OF AMERICA (hereinafter  
21 “defendant”), submits the following *Ex Parte* Application for an Order Extending the Time for a  
22 Response to Complaint, currently due to be filed on March 3, 2008, to March 13, 2008. The  
23 attached memorandum of points and authorities and declaration demonstrate good cause for the  
24 requested extension of time to respond. This application is made for the following grounds: (1)  
25 Counsel for defendant has just received the complete claim file, and requires additional time to  
26 review the entire claim file to determine the appropriate response. (2) In response to defense  
27 counsel’s request for an extension of time to respond to the complaint, counsel for plaintiff has  
28 agreed to grant an extension of time to answer the complaint through March 13, 2008. However,

1 plaintiff's counsel has not responded to defendant's counsel's emails and telephone calls  
 2 requesting an extension of time to respond to the complaint, and defendant's counsel has not yet  
 3 determined whether a motion to dismiss would be appropriate in this matter.

4 Respectfully submitted,

5 RIMAC & MARTIN, P.C.

6  
 7 DATED: February 29, 2008

By: /s/ ANNA M. MARTIN  
 ANNA M. MARTIN  
 Attorneys for Defendant  
 UNUM LIFE INSURANCE COMPANY OF  
 AMERICA

## 14 POINTS AND AUTHORITIES

### 15 **I. INTRODUCTION**

16 The Court should grant defendant's *Ex Parte* Application for an Order Extending Time to  
 17 Respond to Complaint, to March 13, 2008, or later, for the following reasons: (1) Counsel for  
 18 defendant has just received the complete claim file, and requires additional time to review the  
 19 entire claim file to determine the appropriate response. (2) In response to defense counsel's  
 20 request for an extension of time to respond to the complaint, counsel for plaintiff has agreed to  
 21 grant an extension of time to answer the complaint through March 13, 2008. However,  
 22 plaintiff's counsel has not responded to defendant's counsel's emails and telephone calls  
 23 requesting an extension of time to respond to the complaint, and defendant's counsel has not yet  
 24 determined whether a motion to dismiss would be appropriate in this matter.

### 25 **II. LEGAL ARGUMENT**

26 Local Rule provides that "The Court may, in its discretion, grant an initial extension ex  
 27 parte upon the affidavit of counsel that a stipulation extending time cannot reasonably be  
 28 obtained, explaining the reasons why such a stipulation cannot be obtained and the reasons why

1 the extension is necessary. Except for one such initial extension, ex parte applications for  
2 extension of time will not ordinarily be granted.”

3 **1. Good Cause Exists For Granting This Motion**

4 Counsel for defendant has requested that plaintiff stipulate to extending time for a  
5 response to the complaint, but plaintiff’s counsel has only granted an extension of time to answer  
6 the complaint, and plaintiff’s counsel has not responded to defendant’s requests that the  
7 extension of time be to respond to the complaint. (Decl. Counsel, ¶¶ 2-7.)

8 Good cause exists for granting an extension of time to respond to the complaint because  
9 counsel for defendant has just received the entire claim file, and has thus not had the opportunity  
10 to review the claim file, and determine an appropriate response to the complaint. (Decl. Counsel,  
11 ¶ 8.) In response to defense counsel’s request for an extension of time to respond to the  
12 complaint, counsel for plaintiff has agreed to grant an extension of time to answer the complaint  
13 through March 13, 2008. However, plaintiff’s counsel has not responded to defendant’s  
14 counsel’s emails and telephone calls requesting an extension of time to respond to the complaint,  
15 and defendant’s counsel has not yet determined whether a motion to dismiss would be  
16 appropriate in this matter. (Decl. Counsel, ¶¶ 2-8.)

17 Thus, defendant respectfully requests that the Court extend the deadline to respond to the  
18 complaint to March 13, 2008 or later.

19 Respectfully submitted,

20 RIMAC & MARTIN, P.C.

21  
22 DATED: February 29, 2008

23 By: /s/ ANNA M. MARTIN  
24 ANNA M. MARTIN  
25 Attorneys for Defendant  
26 UNUM LIFE INSURANCE COMPANY OF  
27 AMERICA  
28

**ORDER**

The Court, having considered the within *ex parte* application made this day by defendant UNUM Life Insurance Company of America, and good cause appearing therefor,

IT IS ORDERED that defendant must respond to the complaint by March 13, 2008.

**SO ORDERED.**

DATED: \_\_\_\_\_

\_\_\_\_\_  
UNITED STATES DISTRICT COURT JUDGE

1 **RIMAC & MARTIN, P.C.**  
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8 **UNITED STATES DISTRICT COURT**  
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10  
11 ***E-FILING***

12 SHERI GARAY, )  
13 ) CASE NO. 3:08-cv-01059-EDL  
14 Plaintiff, )  
15 vs. ) **DECLARATION OF ANNA M.**  
UNUM LIFE INSURANCE COMPANY OF ) **MARTIN IN SUPPORT OF**  
16 AMERICA, and DOES 1-10, ) **DEFENDANT'S EX PARTE**  
17 Defendants. ) **APPLICATION TO EXTEND TIME**  
18 ) **TO RESPOND TO COMPLAINT**  
19 )  
20 )

21 I, Anna M. Martin, declare as follows:

22 1. I am an attorney licensed to practice before all courts of this state. I am a  
23 principal in the law firm of Rimac & Martin, a professional corporation, and counsel of record  
24 for defendant UNUM Life Insurance Company of America ("defendant") in this case. The facts  
25 stated herein are true of my own knowledge and, if called upon to do so, I could and would  
testify competently thereto.

26 2. On February 25, 2008, my assistant Karl Plischke telephoned plaintiff's counsel  
27 Christine Hopkins, requesting that she agree to a stipulation of time to extend time to respond to  
28 plaintiff's complaint, to March 13, 2008, for the reasons set forth in this application.

1           3.       On February 25, 2008 I telephoned Ms. Hopkins to follow up on Mr. Plischke's  
2 telephone call, and requested Ms. Hopkins grant an extension of time to respond to the  
3 complaint.

4           4.       By email of February 25, 2008, Ms. Hopkins granted defendant's request, writing  
5 "we will agree to the extension until March 13<sup>th</sup> for her to file an answer." The email is attached  
6 as Exhibit A.

7           5.       My office had requested an extension of time to respond to the complaint, and not  
8 just answer. Thus, on February 25, 2008, I wrote an email to Ms. Hopkins requesting that the  
9 extension of time be to respond, and not just answer. The email is attached as Exhibit B.

10          6.       After not receiving a return email or telephone call for three days, I instructed my  
11 associate, Joshua G. Heaviside, to telephone Ms. Hopkins. Mr. Heaviside telephoned Ms.  
12 Hopkins on February 28, 2008, and was told by her assistant that Ms. Hopkins was out for the  
13 day, and he was only able to leave a message with her assistant.

14          7.       Plaintiff's counsel has not responded in any way to my email of February 25, 2008  
15 or Mr. Heaviside's telephone call of February 28, 2008.

16          8.       My office has just received the complete file from my client. I cannot prepare  
17 an adequate response, or determine what an adequate response is, until I have reviewed the  
18 complete file.

19               I declare under penalty of perjury under the laws of the United States of America that the  
20 foregoing is true and correct.

21               Executed February 29, 2008, at San Francisco, California.

22  
23  
24                               /s/ ANNA M. MARTIN  
25                               ANNA M. MARTIN  
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27  
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